

## **REMARKS**

With the entry of the present Amendment, claims 46-69 and 71-76 are in this application. Claims 28-45 and 70 have been canceled without prejudice. Claim 75 has been amended to better claim the present invention. Support is found, e.g., in the first and second paragraphs on page 28 of the Specification. None of the amendments made herein constitutes the addition of new matter.

### **The Rejection Under Section 112, second paragraph**

Claim 75 has been rejected as allegedly indefinite for reciting "hybridize under high stringency conditions." The Patent Office has not accepted Applicants' assertion that this term is defined on page 31 of the specification.

In the interest of advancing prosecution and without acquiescing to the rejection, Applicants have deleted language related to stringency conditions from this claim. Thus, this rejection has been rendered moot, and it should be withdrawn.

### **The Enablement and Written Description Rejections Under Section 112, first paragraph**

Claim 75 has been rejected as allegedly nonenabled and not in compliance with the written description requirement of Section 112, first paragraph, for a polypeptide which is encoded by a nucleic acid which hybridizes at high stringency conditions to the deposited plasmid. Applicants respectfully traverse this rejection.

In the interest of advancing prosecution and without acquiescing to the rejection, claim 75 has been amended to delete language related to stringency conditions from this claim. Note that the specification fully enables this subject matter in that one skilled in the art would not be faced with undue experimentation in order to derive those

protein sequences that are at least 95% identical to SEQ ID NO:40 and to test those sequences for the requisite function. See, for example, pages 43 and 44 of the specification which clearly detail how conservative and non-conservative amino acid substitutions can be made without affecting insect steroid binding, as determined by routine assays known in the art.

In view of the amendment made herein and the clarification above, withdrawal of the rejection is respectfully requested.

Claim 75 has been rejected under 35 USC 112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner has alleged that the "95% identity" language of the claim is new matter. Applicants respectfully traverse this rejection.

In the as-filed Specification at page 28, first paragraph, it is set forth that the polypeptide "comprises an amino acid sequences which is substantially identical to a sequence selected from the group consisting of .....SEQ ID NO:40, .....". In the second paragraph at page 28, substantially identical is defined as "any sequence which is at least about 95% identical" .... to a stated nucleotide sequence or amino acid sequence ....." Applicants respectfully state on the record that these passages provide support for "at least 95% identical" language of the claims and the amendment presented in May 2007 did not constitute the addition of new matter.

Accordingly, Applicants respectfully request allowance of the claims as currently amended, and the withdrawal of the rejections is respectfully requested.

### **Request for Rejoinder**

Rejoinder of the withdrawn claims listed herein is respectfully requested. The remaining claims are dependent on claim 75, which is now believed to be in condition for allowance, and thus are of the same scope. Claim 75 is believed to be allowable. Furthermore, the claims are linked by the common technical feature, i.e., the polypeptide of claim 75.

### **Conclusion**

This application being in condition for allowance, passage to issuance is respectfully requested.

If there any remaining issues related to patentability, the courtesy of a telephone interview is requested. The Examiner is invited to telephone the undersigned to arrange a mutually convenient time to discuss this application.

It is believed that this amendment does not necessitate the payment of any fees under 37 C.F.R. 1.16-1.17. If this is incorrect, however, please charge any fees due under the foregoing Rules for this submission and/or for any extension of time required to Deposit Account No. 07-1969.

Respectfully submitted,

/donnamferber/

Donna M. Ferber  
Reg. No. 33,878

GREENLEE, WINNER AND SULLIVAN, P.C.  
4875 Pearl East Circle, Suite 200  
Boulder, CO 80301  
Telephone (303) 499-8080  
Facsimile: (303) 499-8089  
Email: [winner@greenwin.com](mailto:winner@greenwin.com)  
Attorney docket No. 53-99A